

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,
YANKTON SIOUX TRIBE; ROBERT FLYING
HAWK; OGLALA SIOUX TRIBE,

Plaintiffs,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.

Defendants-Cross
Defendants,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-
Cross Claimant.

Case No. 1:16-cv-1534-JEB
(and Consolidated Case Nos. 16-cv-1796
and 17-cv-267)

**FEDERAL DEFENDANTS' CROSS-
MOTION FOR SUMMARY
JUDGMENT AGAINST YANKTON
SIOUX TRIBE**

Pursuant to Federal Rule of Civil Procedure 56(a), the Court should grant the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and various officials of those agencies (collectively, "Federal Defendants") summary judgment as to all outstanding claims asserted by the Yankton Sioux Tribe and Robert Flying Hawk (collectively, "Yankton") in this case.

First, for the reasons stated in the accompanying Plaintiff-specific memoranda of points and authorities, Federal Defendants are entitled to judgment as to all claims addressed in the August 2019 motions for summary judgment filed by Yankton. *See* ECF No. 435. This includes judgment as to the three issues from the original round of summary judgment briefing for which the Court granted remand. *See Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F.

Supp. 3d 101, 112 (D.D.C. 2017) (“Although the Corps substantially complied with NEPA in many areas, the Court agrees that it did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline’s effects are likely to be highly controversial.”).

Second, pursuant to this Court’s December 12, 2018 order, Federal Defendants are entitled to summary judgment as to all of Yankton’s outstanding claims that are *not* addressed in Yankton’s August 2019 motion for summary judgment and were not previously resolved by the Court’s June 14, 2017 decision on the first round of summary judgment motions filed in this case. In an effort to streamline resolution of the numerous claims remaining in these consolidated cases, this Court ordered Plaintiffs to identify any outstanding claims—not related to the Corps’ remand decision or the National Historic Preservation Act (NHPA)—that Plaintiffs intended to pursue. *See* Text Order (Dec. 12, 2018) (“If any Plaintiff seeks to pursue any other claim (beyond NHPA) not related to the remand, it must identify such claim in a filing by December 19, 2018, or such clam [sic] will be dismissed . . .”). The Court also set a summary judgment briefing schedule, which was later extended. *Id.*; Text Order (June 19, 2019).

Yankton identified additional claims that it intended to pursue. *See* ECF No. 386 (Dec. 19, 2018). However, its August 2019 motion for summary judgment does not mention many of those identified claims, including, for example, claims relating to portions of the Dakota Access Pipeline outside of North Dakota and claims relating to the U.S. Fish and Wildlife Service’s conservation easements. To the extent any of its claims have not been fully addressed in Yankton’s August 2019 motion for summary judgment (or its prior motion for summary judgment, ECF No. 292), Yankton has failed to prosecute those claims under the schedule set by the Court and Federal Defendants are entitled to summary judgment.

In conclusion, the Court should grant Federal Defendants summary judgment in this case.

Dated: October 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Erica Zilioli

Erica Zilioli